



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

APR 5 2000

The Honorable Bud Shuster  
Chairman  
Committee on Transportation and Infrastructure  
U.S. House of Representatives  
Washington, D.C. 20515

OFFICE OF  
WATER

Dear Mr. Chairman:

Last August, the Environmental Protection Agency proposed revisions to the existing program for restoring polluted waters throughout the country. Since then, we have worked closely with the public, State and local government officials, interested organizations, and Members of Congress to describe the proposed revisions and gather insights and suggestions. I want to share with you our current thoughts on how we plan to change the proposed regulations and proceed with the important work of restoring America's polluted waters.

Our goal is to provide a common-sense, cost-effective, framework for making decisions on how to restore more than 20,000 miles of rivers and streams and 300,000 acres of lakes that States identified as polluted in 1998. Over 200 million Americans live within 10 miles of one or more of these polluted waterbodies. I have enclosed an atlas of State maps of polluted waters for your information. Clearly, despite all the progress we have made toward clean water, we still have a long way to go.

The 1972 Clean Water Act directs States to take the lead in identifying polluted waters and defining needed pollution reductions – called "Total Maximum Daily Loads" or "TMDLs." This provision of the Clean Water Act is fundamentally sound. Essentially, a TMDL is a "pollution budget" for a waterbody. The budget is worked out by the State in consultation with the various users of the waterbody in a "bottom-up," locally driven process. For the pollution budget to be realistic, all sources of pollution must have a seat at the table.

State officials have expressed concern over the workload and costs of the TMDL program. EPA is making every effort to respond to this concern. For example, EPA recently issued a regulation eliminating the requirement that States submit lists of impaired waters this year; new lists will not be due until 2002. The annual appropriation available to States to administer and directly implement TMDLs and the clean water program has steadily increased from \$131 million in 1993 to a proposed \$410 million in the Administration's proposed 2001 budget. This State grant funding for TMDLs increases by \$45 million in FY 2001 alone. In addition, the Administration's budget proposes new flexibility in the clean water loan funds to States to make grants, rather than loans, for projects to implement some TMDLs.

I regret the confusion about treatment of diffuse runoff in our August TMDL proposal. I would like to clarify that EPA remains committed to relying on voluntary approaches to reduce runoff from diffuse sources of water pollution. The proposed rule would not require Clean Water Act permits for polluted runoff. Instead, States would identify these sources when they cause waterbodies to be polluted. The State would identify voluntary or incentive-based programs through which these sources can help meet the "pollution budget" for the waterbody. The statutory basis for including these sources in the TMDL process was recently affirmed by the Federal district court in California. Since the majority of polluted waters are polluted in whole or in part by these diffuse sources, a management framework that does not address them cannot succeed in meeting our clean water goals. Voluntary and incentive-based approaches, which are often supported by financial assistance from the Federal government, are the preferred way to address these problems. EPA has proposed that State grant funds for polluted runoff programs be increased from \$200 to \$250 million in FY 2001 and the President has also requested substantial increases for conservation assistance programs at the US Department of Agriculture.

During a comment period of over four months, and in several public meetings, EPA discussed the proposal with thousands of interested persons. Since the comment period closed in January, EPA has been evaluating comments ranging from postcards and form letters to detailed assessments. Based on our assessment of these comments, I anticipate that the final rule will provide a strong and effective framework to restoring polluted waters and include a number of important changes from the proposal. A summary of the expected key elements of the final TMDL regulation, including identification of anticipated major changes from the proposed rule, is attached.

I hope you find this information useful and I look forward to working with you to develop a common-sense and effective approach to restoring polluted waters across the country.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Charles Fox". The signature is stylized with a large, sweeping initial "J" and a long, trailing flourish at the end.

J. Charles Fox  
Assistant Administrator

ENCLOSURES:

- Atlas of America's Polluted Waters
- Key Elements of Expected Final Regulation



# KEY ELEMENTS OF EXPECTED FINAL REGULATION FOR RESTORING AMERICA'S POLLUTED WATERS

## *Delivering the Promise of the 1972 Clean Water Act*

The final rule will provide a common-sense, cost-effective framework for making decisions on how to restore the polluted waters around the country. EPA expects that the final rule will:

- *Tell the Full Story* -- provide for a comprehensive listing of *all* the Nation's polluted waters;
- *Meet Clean Water Goals* -- identify pollution reduction needed to meet the clean water goals established by States in water quality standards;
- *Encourage Cost-Effective Clean-up* -- assure that all sources of pollution to a waterbody are considered in the development of plans to restore the waterbody;
- *Rely on Local Communities* -- foster local level, community involvement in making decisions about how best to meet clean water goals;
- *Foster On-the-Ground Action* -- call for an implementation plan that identifies specific pollution controls for the waterbody that will attain clean water goals; and
- *Commit to Environmental Results* -- require a "reasonable assurance" that the needed pollution reductions will be implemented.

## *Enhancing State Flexibility in Managing Polluted Waters*

States will have the lead to identify and clean up polluted waters through the TMDL program. The final regulation will expand the flexibility that States have to tailor programs to the specific needs and conditions that they face. EPA expects that the final rule will:

- *Give States More Time* -- allow States 4 years to develop lists of polluted waters, rather than 2 years as under current regulations;
- *Give States More Time* -- allow States to develop TMDLs over a period of up to 15 years, rather the 8-13 year timeframe of the current program;
- *Tailor to Local Conditions* -- tailor implementation plan requirements and add flexibility to account for different types of sources causing the water quality problem; and

- **Endorse Voluntary Programs** -- give full credit to voluntary or incentive-based programs for reducing polluted runoff through diverse control measures, including best management practices (BMPs).

### ***Streamlining the Regulatory Framework***

In response to comments from many interested parties, the final rule will be streamlined and focused on what is needed for effective TMDL programs. EPA expects that the final rule will:

- **Drop Threatened Waters** -- drop the requirement that polluted water lists include "threatened" waters that are expected to become polluted in the near future;
- **Allow More Flexibility in Setting Priorities** -- drop the proposed requirement that States give top priority to addressing polluted waters that are a source of drinking water or that support endangered species;
- **Drop Petition Process** -- drop the proposal to provide a public petition process for review of lists of impaired waters or TMDL program implementation;
- **Drop Requirements for Offsets of New Pollution** -- drop proposals to require offsets before new pollution can be discharged to polluted waters prior to the development of a TMDL; and
- **Revise Approach to Forest Pollution** -- clarify that Clean Water Act permits will not be required for diffuse runoff from forestry operations under any circumstances and discharges from these operations could be managed by State forest management programs that are proven effective.

### ***Assuring Adequate Resources for an Effective Program***

States and others have identified a need for increased funding to support more complete assessment of the condition of waters and the development of TMDLs for polluted waters. The FY 2001 President's budget:

- increases funding for State administration of the TMDL program by \$45 million;
- increases funding for State programs to reduce polluted runoff by \$50 million; and
- sharply increases funding for agricultural conservation programs at the USDA.

In addition, EPA expects that the final rule will support more cost-effective development of TMDLs by more specifically encouraging States to develop TMDLs on a watershed scale.